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Chairman: Mr. Politi ..... (Italy)

Contents

Agenda item 162: Establishment of the International Criminal Court (*continued*)

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The meeting was called to order at 3.10 p.m.

Agenda item 162: Establishment of the International Criminal Court (*continued*) (PCNICC/2000/INF/3 and Add.1-2)

1. **Mr. Valdés** (Chile) said that his country had recently faced a controversy stemming from the attempt by a court of another State to arrogate to itself the power to judge cases of serious human rights violations that were being tried in Chilean courts. It was with great satisfaction that his Government had been able to show the international community that those cases were continuing to be tried in its courts, thus clearly demonstrating their independence and capacity to carry out the investigation of the crimes concerned.

2. That experience had underscored the urgent need to have an international criminal court that would recognize the preferential right of national courts to judge serious international crimes and the supplementary jurisdiction to be exercised by the international court in such cases.

3. The adoption of the Rome Statute had been a very important step towards completing the international legal framework for the Court while also reflecting the ethical and moral evolution of the international community. In establishing the Court, the world was sending a message that impunity would not be tolerated and that the perpetrators of the most serious crimes would be brought to justice.

4. His delegation was convinced that the Court should have a genuinely universal character. The efforts made by the international community at the Rome Conference and in the preparatory process leading up to it would serve no purpose if, in the final analysis, the Court represented only a small group of States. The rules governing the Court's jurisdiction required that the largest possible number of States should accept that jurisdiction if the Court was to be fully effective. To that end, his delegation would continue working to resolve the legitimate concerns of certain States which prevented them from becoming parties to the Statute.

5. At the same time, it was important to maintain the content and integrity of the Statute. No changes should be made to the delicate balances achieved in Rome during negotiations on the Relationship Agreement. His delegation attached special importance to the retention of all the rules pertaining to the jurisdiction of the Court as adopted in Rome.

6. His delegation noted the achievements made at the recent session of the Preparatory Commission at which two instruments of great significance had been adopted, namely, the Rules of Procedure and Evidence (PCNICC/2000/INF/3/Add.1) and the Elements of Crimes (PCNICC/2000/INF/3/Add.2). Both instruments supplemented the Statute without modifying it in any way.

7. Important steps remained to be taken, such as agreeing on a definition of the crime of aggression that would be acceptable to the international community, identifying the elements of that crime and determining the conditions under which the Court should exercise jurisdiction. In addition, work remained to be done on the Relationship Agreement between the Court and the United Nations. That instrument should regulate the relationship between the two entities in accordance with the Statute without in any way affecting the necessary independence of the Court.

8. The number of instruments of ratification filed to date led his delegation to believe that the Statute would soon enter into force. His Government noted with satisfaction the campaign undertaken by Canada to obtain the necessary number of ratifications. Chile expected to be in a position soon to ratify the Statute after having been one of its first signatories in September 1998.

9. **Mr. Vázquez** (Ecuador) said it was encouraging to note that the Preparatory Commission had adopted by consensus, within the established time-frame, the finalized draft texts of two important instruments provided for in resolution F of the Rome Conference, namely, the Rules of Procedure and Evidence and the Elements of Crimes.

10. After signing the Rome Statute in October 1998, his Government had carried out a process of consultation among the competent national entities. The Rome Statute had been transmitted by the Ministry of Foreign Affairs to the Congress for its consideration, a process that was continuing with a view to early ratification after the Constitutional Court had delivered the relevant opinion.

11. His delegation hoped to make a constructive contribution to the achievement of consensus on the

definition of the crime of aggression. To that end, it was in favour of the Preparatory Commission holding two additional two-week sessions in 2001.

12. **Mr. Bocalandro** (Argentina) said that his delegation had supported the establishment of the Court from the outset and had worked intensively to that end with other delegations and organizations. It was to be hoped that the current stage — the Rome Statute's ratification by States — would be completed as soon as possible, to be followed by its entry into force. In Argentina it had received legislative approval and was on course for ratification within the next few months.

13. The Statute's entry into force was, however, only one of many stages to be accomplished before the Court was fully operational. National courts would assume new responsibilities, for which new legislation would be needed. Thus his country's foreign affairs, justice and defence ministers had just set up a committee to consider the adaptation of Argentina's legislation to the Statute and to prepare the necessary draft legislation. The Court would not be able to carry out its functions unless national courts showed due cooperation. It was also important that the Committee's consideration over the coming weeks of other documents relevant to making the Court operational should stick to the letter and spirit of the Statute in order to maintain its integrity.

14. **Ms. Di Felice** (Venezuela) said that her Government, which had supported and actively participated in the establishment of the Court on the basis of its universality, complementarity and autonomy, had ratified the Rome Statute on 7 June 2000, thus demonstrating the significance it attached to the establishment of such a body and the priority it gave to making justice reliable and transparent both nationally and internationally.

15. The Preparatory Commission had achieved much and her delegation hoped that the rest of its mandate would be completed with equal success. Among its other tasks should be to agree on a definition of the crime of aggression; the other most serious international crimes had been given precise definition. Her delegation had therefore supported the creation of a working group to that end in 1999 and taken note of the various proposals made. An excellent basis was provided by the definition contained in General Assembly resolution 3314 (XXIX). Other proposals had merits but still lacked balance and the necessary safeguards against political interference in the Court's role. The integrity of the Rome Statute must be preserved, but universal participation in the Court was also essential. Only thus could it be fully effective. Her delegation was confident that the Court would shortly be operational.

16. **Mr. Akeju** (Nigeria) said that the adoption of the Rome Statute had sent a signal to those engaged in gross violations of human rights that the world would not stand idly by. Following that success, the Preparatory Commission had since adopted finalized draft texts for two important technical instruments, the Elements of Crimes and the Rules of Procedure and Evidence (PCNICC/2000/INF/3/Add.1-2). It remained for participants in the session to be held in November and December 2000 to ensure that the Commission's entire mandate was accomplished. His Government had signed the Statute on 1 June 2000 and was favourably disposed to ratifying it. Its legislative processes had been set in motion for that purpose. The International Criminal Court had received widespread support; if it was to be universally acceptable, however, its independence and impartiality needed to be guaranteed. In that connection, the principle of equitable geographical representation and the reflection of the principal legal systems of the world would be important criteria in appointing judges.

17. Lastly, although speculation as to the possible relationship between the Court and the existing ad hoc international criminal tribunals was premature, the international community could be certain that the Court would benefit from the copious literature already accumulated, especially in the area of precedents, and would emerge as an effective deterrent against the worst crimes affecting humanity.

18. **Mr. Balde** (Guinea) said that, despite the will expressed at the United Nations Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court to prevent new murderous confrontations in the world, a deplorable indulgence was still being extended to the perpetrators of appalling crimes that had left over five million people dead over the past 10 years. The existing ad hoc international criminal tribunals, although of great importance, dealt with circumscribed areas. The International Criminal Court would be unable to play its full role, however, unless it enjoyed real independence and universality and could provide guarantees for victims and

witnesses. It should not be subjected to any political pressure. It should be complementary and subsidiary to national jurisdictions. His Government had signed the Rome Statute and would shortly proceed to ratification, in token of its determination to combat injustice and impunity. In that connection, his delegation would welcome the inclusion of the crime of aggression in the Court's competence. The adoption by the Preparatory Commission of the finalized draft text of the Elements of Crimes and Rules of Procedure and Evidence was commendable.

19. **Mr. Keinan** (Israel) said that, as one of the originators of the concept of an International Criminal Court, his delegation supported the Rome Statute; however, it remained deeply concerned at the inclusion, in the list of the gravest war crimes, of formulations tailored to meet the political agenda of certain States, while deviating greatly from the wording enshrined in the original instruments of international humanitarian law, on which they were based. Such an approach was an unfortunate reflection on the views of certain States on the Court's aims and functions. Similarly, the palliative interpretations adopted by the Preparatory Commission could not dispel the cloud of politicization surrounding what had been intended to be an impartial historical document, benefiting mankind as a whole. A political, public and academic debate concerning the Court and its importance in the context of international law and the international community was currently in progress in Israel, with a view to considering whether the Government would be able to sign the Statute before the end of 2000.

20. **Mr. Lacanilao** (Philippines) said that 21 States had so far ratified the Rome Statute and a large number of States had signed it. In June the Preparatory Commission had adopted by consensus the draft instruments on the Elements of Crimes and the Rules of Procedure and Evidence. Within a few weeks it would continue its work on the Relationship Agreement between the Court and the United Nations, the Court's Financial Regulations, the Agreement on Privileges and Immunities and the crime of aggression.

21. While his Government shared the noble objectives that had inspired the establishment of the Court, there were certain doubts and concerns as to how the Court would pursue its mandate. While the basic tenets of the Court were consistent with customary international law and due process, it was important that they should be applied effectively and without regard to politics and partisanship. The greatest pitfall for the Court would be to discharge its mandate unevenly.

22. Some delegations had alluded to the possible danger of political abuse of the Court by strong States in order to dominate weak ones. While safeguards were embodied in the Court's Statute and Rules, the fairness of its future functioning depended on the good faith of States parties to the treaty as well as the integrity of the judges and the prosecutor. Such good faith would be tested in the following weeks as the Preparatory Commission continued its debate on the definition of the crime of aggression. The issue was important for developing countries, many of which resented the use of force by strong States.

23. The Court should be free from political pressure. The Court and the prosecutor must resolve questions purely on legal grounds. They should not allow themselves to act as political instruments of any interest or sector. Nevertheless, politics had intruded into the discussion of the crime of aggression in the form of a proposal to insert the highly politicized processes of the Security Council into the Court's jurisdiction. The idea that the Security Council should have any role at all in the determination of the Court's jurisdiction stoked the fears of some that it would become a tool of political domination.

24. His Government would look closely at the results of the next session of the Preparatory Commission and would join the Rome Treaty only if it became convinced that the Court would be both effective and fair in the fulfilment of its mandate.

25. **Mr. Traoré** (Burkina Faso) said that at its forthcoming session, the Preparatory Commission would deal with, inter alia, the crime of aggression. His delegation wished to see a strict distinction made between the question of the crime of aggression and other matters that were more likely to be administrative in nature. It would be unacceptable for the question of the crime of aggression to be relegated to a position of lower priority, as aggression was the most serious crime against the international order, and significant elements of a definition existed already in custom and in the general principles of international law.

26. His delegation would distance itself from any position which in any way, tacitly or explicitly, challenged the integrity of the Rome Statute. It was

necessary to move forward, however, to ensure that the provisions adopted were fair and impartial. It would be neither responsible nor appropriate to equivocate with regard to those positions which sought to exclude certain nationals from the jurisdiction of the Court. The subordination of the Court to the Security Council should also be rejected firmly and unequivocally. It was unclear what would become of the principle of an independent judiciary if the Court came under the control of political authorities that could restrict its action.

27. His Government was fully committed to the establishment of the International Criminal Court. It had signed the Rome Statute and would ratify it in due course.

28. **Mr. Haj Ibrahim** (Syria) said that, on the basis of its compliance with international law, international humanitarian law and the Charter of the United Nations, his country supported international cooperation for the development of international law and its institutions and for the creation of important new legal institutions such as the International Criminal Court. Such a Court was essential in bringing to justice the perpetrators of acts of aggression, war crimes, crimes against humanity and genocide, which included those responsible for the Israeli massacres carried out in southern Lebanon and the Palestinian occupied territories, particularly during the previous 10 days, when over 100 defenceless young Palestinians had been brutally killed and vicious armed attacks had been mounted on Palestinian towns and villages.

29. He welcomed the Preparatory Commission's adoption of the finalized draft texts of the Rules of Procedure and Evidence and the Elements of Crimes, and hoped that similar tangible progress would be achieved in the forthcoming work on the crime of aggression so that more States would be encouraged to sign and ratify the important Rome Statute. He emphasized respect for the letter and spirit of the Statute, which should undergo no form of amendment and should take precedence in the event of any contradiction with texts subsequently elaborated by the Preparatory Commission. Equally, no concessions should be made to incorporate exceptions aimed at weakening the Court in order to satisfy those who rejected the Statute or who had difficulties with some of its articles and feared that their acts would be subject to the authority of the Court at some future stage. The Court would be pointless if only certain persons or nationalities were tried, since everyone was equal before the law without distinction or partiality.

30. With reference to the priority task of defining the crime of aggression, he believed that the definition contained in General Assembly resolution 3314 (XXIX) of 14 December 1974 served as a viable basis on which to build. He reaffirmed his view that any definition should cover all forms of aggression and that the crime should not be politicized. In that connection, he shared the opinion of the representative of the Islamic Republic of Iran that, while the mechanism should not deny the role of the Security Council, neither should it prevent perpetrators of the crime of aggression from being brought to account owing to the failure of the Security Council to act promptly or its inability to reach a decision in cases where the right of veto was used. Moreover, consideration should be given to conferring an appropriate role on the General Assembly in accordance with the Charter. His delegation was prepared to cooperate in a detailed examination of the elements of the crime of aggression and the role of the Security Council, in which context it had already played an active part in previous meetings and submitted various documents in regard to aggression.

31. In conclusion, he repeated his request to avoid the scheduling of simultaneous meetings with a view to enabling small delegations to attend every meeting, as well as to achieving wide attendance and transparency. He also emphasized the importance of ensuring the availability of interpretation services during informal consultations and supported the proposal that the Preparatory Commission should have two sessions, each of two weeks' duration, in 2001 for the consideration of outstanding matters. Furthermore, sufficient time should be allocated for both the formal and informal meetings of the Working Group on the Crime of Aggression.

32. **Mr. Lubinda** (Botswana) said that Botswana had signed and ratified the Rome Statute in September 2000, thereby reiterating its commitment to the Court and its deep desire to see criminals brought to justice, as well as its determination to ensure the elimination of criminal atrocities and the punishment of those who perpetrated such acts. In his view, the Rules of Procedure and Evidence and the Elements of Crimes guaranteed the rights of accused persons to a fair trial and also protected the rights of victims, particularly in regard to compensation and their participation in

relevant proceedings. He therefore applauded the efforts that had resulted in their codification, which, in his view, would assist in dispelling the fears and scepticism that had prevented some countries from taking positive steps to ratify and/or sign the Statute.

33. He fully endorsed the need for States to receive technical and financial support in their endeavours to harmonize their national criminal laws and procedures with the International Criminal Court and trusted that all remaining work would be carried out with the same enthusiasm and commitment hitherto displayed by the Preparatory Commission and the membership of the United Nations.

34. **Mr. El-Mssalloti** (Libyan Arab Jamahiriya) affirmed that his country had always avidly supported the establishment of an international criminal court to punish the perpetrators of crimes endangering international peace and security, such as genocide, terrorism, war crimes and crimes against humanity, to which end it had effectively participated in the work of the Preparatory Commission. Regrettably, however, the mechanism which had evolved as a result of those efforts did not apply the principle to which his own country adhered whereby the weak and the strong were subject to equal treatment. As such, the Rome Statute failed to meet the hopes and aspirations of all members of the international community, since political motives could produce a situation where one person was tried for a crime while another person having committed the same crime was not.

35. Consideration should therefore be given to the factors which had prompted many States, including his own, to refrain from ratifying and signing the Statute. The fact that the Security Council had the jurisdiction to refer crimes to the Court under Article VII of the Charter was a major shortcoming of the Statute in view of the bias that could intervene, as in the case of the Security Council resolutions under which his country had suffered for seven years and for which the motivations were more political than legal. As such, the ambitions of his own country and others for the creation of an effective and transparent international criminal system in which it was not simply a case of the strong accusing the weak had been disappointed.

36. His country would be unable to sign or ratify the Statute unless amendments were introduced in response to its concerns. Moreover, extremely serious crimes such as massacre, attacks on international forces, drug trafficking, the use or threat of use of nuclear weapons and all forms of terrorism, particularly State terrorism, were not included within the jurisdiction of the Court, which would also be unable to address the crime of aggression until a definition was agreed. Despite such failings, however, his country had participated effectively in the meetings of the Preparatory Commission and was making ongoing efforts to contribute to the successful outcome of its work. Such efforts, however, would be incomplete without an agreed definition of the crime of aggression, to which some States had thus far remained averse for purely political reasons.

37. **Mr. Akamatsu** (Japan) noted with satisfaction that 114 States had signed the Rome Statute and hoped that the number of ratifications would increase rapidly. He emphasized that without universal support, the Court would not be as effective or as credible as had been hoped, even if the Statute attained more than the minimum 60 ratifications.

38. At its next session, the Preparatory Commission would discuss the Relationship Agreement between the United Nations and the Court, the Agreement on Privileges and Immunities and the Financial Regulations of the Court. The last-mentioned were especially important, since without a proper financial basis the Court would be unable to carry out its work.

The meeting rose at 4.40 p.m.